



House of Representatives

General Assembly

File No. 16

January Session, 2003

House Bill No. 6386

House of Representatives, March 10, 2003

The Committee on Labor and Public Employees reported through REP. RYAN, of the 139th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE EMPLOYEES' REVIEW BOARD.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 5-202 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 (a) Any employee who is not included in any collective bargaining
4 unit of state employees and who has achieved a permanent
5 appointment as defined in subdivision (19) of section 5-196 may appeal
6 to the Employees' Review Board if [he or she] such employee receives
7 an unsatisfactory performance evaluation or is demoted, suspended or
8 dismissed, or is aggrieved as a result of alleged discrimination, or
9 unsafe or unhealthy working conditions or violations involving the
10 interpretation and application of a specific state personnel statute,
11 regulation or rule. Such employee must have complied with
12 preliminary review procedures, except as otherwise provided in
13 subsection [(k)] (l) of this section. Such an appeal shall be submitted to
14 the board [within] not later than thirty days [of] from the completion

15 of the final level of the preliminary review procedure, provided the
16 first level of the procedure shall have been initiated no later than thirty
17 calendar days from the date of the alleged violation, except that in
18 cases of dismissal, demotion or suspension the grievance must be
19 submitted directly to the third level of the procedure and shall have
20 been initiated no later than thirty calendar days from the effective date
21 of such action.

22 (b) Any group of employees that is not included in any collective
23 bargaining unit of state employees may file an appeal as a group
24 directly with the Employees' Review Board if such group of employees
25 is laid off or dismissed, or is aggrieved as a result of alleged
26 discrimination, or unsafe or unhealthy working conditions or
27 violations involving the interpretation and application of a specific
28 state personnel statute, regulation or rule, provided each member of
29 such group has achieved a permanent appointment, as defined in
30 subdivision (19) of section 5-196. Such an appeal shall be submitted to
31 the board not later than thirty calendar days from the specific incident
32 or effective date of action giving rise to such appeal.

33 ~~[(b)]~~ (c) Upon receiving an appeal, the board shall assign a time and
34 place for a hearing and shall give notice ~~[thereof]~~ of such time and
35 place to the parties concerned. The hearing panel shall not be bound by
36 technical rules of evidence prevailing in the courts. If, after hearing, a
37 majority of the hearing panel determines that the action appealed from
38 was arbitrary or taken without reasonable cause, the appeal shall be
39 sustained; otherwise, the appeal shall be denied. The hearing panel
40 shall have the power to direct appropriate remedial action and shall do
41 so after taking into consideration just and equitable relief to the
42 employee or group of employees and the best interests and
43 effectiveness of the state service. The hearing panel shall render a
44 decision ~~[within]~~ not later than sixty calendar days from the date of the
45 conclusion of the hearing.

46 ~~[(c)]~~ (d) The employee or group of employees in any such case shall
47 be furnished, upon ~~[his]~~ request, with a copy of the transcript of the

48 proceedings before the board. The chairman of the board shall
49 establish a fair and reasonable fee per page to be charged for such
50 transcript which fee shall not exceed the fee per page for a transcript
51 charged by court reporters for the judicial district of Hartford.

52 [(d) Within] (e) Not later than ten days [of] from the issuance date of
53 a decision by a hearing panel sustaining an appeal, the appointing
54 authority of the employee shall take such measures as are necessary to
55 comply with the remedial action directed by the hearing panel.

56 [(e)] (f) An employee or group of employees laid off or dismissed by
57 reason of economy, lack of work, insufficient appropriation, change in
58 departmental organization or abolition of position may file an appeal
59 with the board only on the grounds that the order of layoff or
60 dismissal has not been determined in accordance with the provisions
61 of section 5-241, provided (1) such employee has initiated the third
62 level of the preliminary review procedure [within] not later than thirty
63 calendar days [of] from the effective date of such layoff or dismissal, or
64 (2) such group of employees submits such appeal to the board not later
65 than thirty calendar days from the effective date of the layoff or
66 dismissal.

67 [(f)] (g) All matters involving examination, including application
68 rejection, type of examination or results, compensation for class or
69 classes, establishment of a new class or classes, classification of a
70 position, occupational group or career progression level, compliance
71 with health and safety standards and the Connecticut Occupational
72 Safety and Health Act or alleged discrimination in cases where an
73 appeal has been filed with the Commission on Human Rights and
74 Opportunities, shall not be appealable under this section.

75 [(g)] (h) The first level of the preliminary review procedure
76 preparatory to the filing of an appeal from an alleged grievable action
77 under subsection (a) of this section other than dismissal, demotion or
78 suspension shall be the aggrieved employee's supervisor or
79 department chief or other employee as designated by the employee's
80 appointing authority. Such aggrieved employee shall present the

81 employee's grievance in writing on a form developed by the Secretary
82 of the Office of Policy and Management and the Employee Review
83 Board which form shall contain a statement of the date the alleged
84 violation occurred and the relief sought in answer to the grievance.
85 The first level designee shall give said designee's answer to such
86 employee [within] not later than seven calendar days from the date the
87 grievance is submitted to said designee or [within] not later than seven
88 days from the date of a meeting convened for the purpose of reviewing
89 the grievance, in which case such meeting shall be convened [within]
90 not later than seven calendar days from the date the grievance is
91 submitted.

92 [(h)] (i) The second level of the preliminary review procedure
93 preparatory to the filing of an appeal from an alleged grievable action
94 under subsection (a) of this section other than dismissal, demotion or
95 suspension shall be the aggrieved employee's appointing authority or
96 designated representative. Such employee, upon receiving a response
97 at the first level which [he] the employee deems to be unsatisfactory,
98 may proceed to this level by presenting the same form containing the
99 first level answers [within] not later than seven calendar days from the
100 date the answer was given at the first level. The appointing authority
101 or designated representative shall answer such employee [within] not
102 later than seven calendar days from the date the grievance is received
103 or [within] not later than seven calendar days from the date of a
104 meeting convened for the purpose of reviewing such grievance, in
105 which case such meeting shall be convened [within] not later than
106 seven calendar days from the date such grievance is received.

107 [(i)] (j) The third level of the preliminary review procedure
108 preparatory to the filing of an appeal from an alleged grievable action
109 under subsection (a) of this section including dismissal, demotion or
110 suspension shall be the Secretary of the Office of Policy and
111 Management or the secretary's designated representative. The
112 employee, upon receiving a response at the second level which [he] the
113 employee deems to be unsatisfactory, may proceed to this level by
114 presenting the same form containing the first and second level answers

115 [within] not later than seven calendar days from the date the answer
116 was given at the second level, except in the case of a dismissal,
117 demotion or suspension in which case such employee must present the
118 form, completed but without answers at lower levels [within] not later
119 than thirty calendar days [of] from the effective date of such action.
120 The Secretary of the Office of Policy and Management or the
121 secretary's designated representative shall reply to such employee
122 [within] not later than thirty calendar days from the date such
123 grievance is received or [within] not later than fifteen calendar days
124 from the date of a meeting convened for the purpose of reviewing such
125 grievance, in which case such meeting shall be convened [within] not
126 later than thirty calendar days from the date such grievance is
127 received.

128 [(j)] (k) Employees shall be entitled to have representation of their
129 own choosing at any or all levels of the review or appeal procedure.
130 No verbatim records shall be required in the preliminary procedure
131 and no oaths or affirmations shall be administered.

132 [(k)] (l) Any state officer or employee, as defined in section 4-141, or
133 any appointing authority shall not take or threaten to take any
134 personnel action against any state employee or group of state
135 employees in retaliation for [such employee's] the filing of an appeal
136 with the Employees' Review Board or a grievance with any level of the
137 preliminary review procedure pursuant to this section. An employee
138 or group of employees alleging that such action has been threatened or
139 taken may file an appeal directly with the board [within] not later than
140 thirty days [of] from knowledge of the specific incident giving rise to
141 such claim.

142 [(l)] (m) Either the Secretary of the Office of Policy and Management
143 or any employee or group of employees aggrieved by a decision of the
144 Employees' Review Board may appeal [therefrom] from such decision
145 in accordance with section 4-183. The board may intervene as a party
146 in any appeal of its decision. Any employee or group of employees
147 who prevails in a decision of the Employees' Review Board shall be

148 entitled to recover court costs and reasonable attorney's fees if such
149 decision is appealed by the Secretary of the Office of Policy and
150 Management and affirmed by the court in such appeal.

151 Sec. 2. Subsection (a) of section 5-240 of the general statutes is
152 repealed and the following is substituted in lieu thereof (*Effective*
153 *October 1, 2003*):

154 (a) An appointing authority, subject to any regulations issued by the
155 Secretary of the Office of Policy and Management, may reprimand or
156 warn an employee in the classified service under the appointing
157 authority's jurisdiction or suspend such an employee without pay or
158 with reduced pay for an aggregate period not exceeding sixty calendar
159 days in any calendar year. For any employee not included in any
160 collective bargaining unit of state employees, any written reprimand or
161 warning shall be included in the employee's personnel file and, if not
162 merged in the next service rating, shall be expunged after twelve
163 months from the date of reprimand or warning. Any such written
164 reprimand or warning may be reviewed in accordance with the
165 procedures established in subsections [(g) and] (h) and (i) of section 5-
166 202, as amended by this act.

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| This act shall take effect as follows: | |
| Section 1 | <i>October 1, 2003</i> |
| Sec. 2 | <i>October 1, 2003</i> |

LAB *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Type | FY 04 \$ | FY 05 \$ |
|---------------------------------------|-----------|-------------------|-------------------|
| Department of Administrative Services | GF - Cost | Potential Minimal | Potential Minimal |

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill allows a group of non-unionized permanent state employees to appeal directly to the Employees' Review Board. The Employees' Review Board functions to resolve grievances and disciplinary action issues of permanent state employees not covered under collective bargaining. The Employees' Review Board is assigned to the Department of Administrative Services (DAS) for administrative purposes only.

This bill will result in potential minimal costs to DAS. The number of additional appeals that may be brought before the Employees' Review Board as a result of this bill cannot be determined at this time, but it is not expected to be significant. The average cost of hearings over the past four years is approximately \$6,000.

OLR Bill Analysis

HB 6386

AN ACT CONCERNING THE EMPLOYEES' REVIEW BOARD**SUMMARY:**

This bill allows a group of permanent state employees who are not represented by any state employee union to appeal directly as a group to the Employees' Review Board under certain circumstances. Under current law, individual nonunionized employees can, under most circumstances, appeal an employment-related issue to the board only after going through a three-stage grievance procedure.

The bill extends the hearing and related provisions that apply to individual appeals to group appeals.

EFFECTIVE DATE: October 1, 2003

GROUP APPEALS TO THE BOARD

By law, a nonunionized permanent state employee can appeal to the board after going through a grievance procedure. The procedure usually involves his immediate supervisor, his appointing authority (e.g., his agency commissioner), and the Office of Policy and Management (OPM) secretary. (The latter two officers can name designees to hear grievances.) An individual can grieve a wide range of issues. Cases involving dismissal, demotion, or suspension must go directly to the third stage of the grievance procedure.

The bill allows any group of nonunionized permanent employees to appeal directly as a group to the board if the group (1) has been laid off or dismissed or (2) is aggrieved by (a) alleged discrimination, (b) unsafe or unhealthy working conditions, or (c) the interpretation and application of a specific state personnel statute, regulation, or rule. (Individual employees can already grieve these issues.) The group must submit its appeal to the board within 30 days of the specific incident or effective date that caused the complaint.

The bill extends to group appeals provisions that apply to individual

appeals. Among other things, these provisions (1) require the board to name a panel to hear the appeal and require the panel to issue its decision within 60 days of the end of the hearing; (2) bar state officers or employees from retaliating against employees who appeal to the board; and (3) allow employees or the OPM secretary, if aggrieved by the board's decision, to appeal it to the courts.

By law, individual employees can appeal layoffs and dismissals that arise from certain causes only on the grounds that the order of the dismissal or layoff has not complied with relevant state law. The causes are lack of work, economy, insufficient appropriation, change in departmental organization, or abolition of a position. The bill extends these provisions to group appeals. Such appeals must be made to the board no later than 30 days from the layoff or dismissal effective date. By law, the employee can only appeal to the board under these circumstances if he has initiated the third stage of the grievance procedure within 30 days of the layoff or dismissal.

BACKGROUND

Employees' Review Board

The board hears complaints from nonunion state employees regarding issues such as unsatisfactory performance evaluations, demotions, suspensions, or dismissals.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Report

Yea 8 Nay 4